DOCUMENT RESUME

ED 194 558 TM 800 687

AUTHOR Fisher, Thomas H.
TITLE The Courts and Your Minimum Competency Testing Program--A Guide to Survival.
INSTITUTION National Council on Measurement in Education, Washington, D.C.
PUB DATE 80
NOTE 13p.
AVAILABLE FROM National Council on Measurement in Education Attn: William J. Russell, 1230 17th Street, N.W., Washington, DC 20036 ($2.50: 25 or more, $0.75 each).
JOURNAL CIT NCME Measurement in Education: v11 n1 Fall 1980

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Administrator Guides; Coping; *Court Litigation; Elementary Secondary Education; *Legal Problems; *Minimum Competency Testing; Student Rights; Testing Programs

ABSTRACT

The events surrounding legal challenges to minimum competency testing programs are described, and ways of coping with the experiences are suggested. Discussion primarily is based on five legal challenges to the Florida program although reference is made to suits in other states for contrast. Whenever a student is faced with a threat to promotion or graduation, the probability of having the testing program contested is very real. Litigation is costly in terms of financial resources, time, and labor. Testing directors who get involved in litigation should work closely with their attorneys. All areas of test development and implementation will be attacked in court. Concommitant issues will be chiefly in the area of constitutional rights and segregation of the schools. The best defense is to have a well designed program. The experience of having the testing program challenged in court is not improper. Minimum competency testing programs are causing a dramatic change in today's schools. It is only proper that educators know for certain that children's rights are not being violated. (Author/RL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED194588 "PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY NCME TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

Volume 11, No. 1 Fall, 1980

TM 800687

The Courts and Your Minimum Competency Testing Program — A Guide to Survival

Thomas H. Fisher

Every so often, a manuscript crosses an editor's desk that is truly unique; such a manuscript is the one published in this issue. Dr. Fisher addresses a topic that is not new, in the abstract, but certainly reflects the real world of the public school administrator as few authors have done. One can feel and almost cut the palpable tension that public and private school administrators experience daily. That we live in a world of conflict is a concept many of us have come to accept — in the abstract. But few of us have expressed so clearly the emotions, the frustrations, the fears and the professional and personal anxieties that are an integral part of those abstractions we so blithely speak of. Tom Fisher lives in the midst of litigation and — so far — copes well.

The author shares with us a picture of what to expect from those who attack our testing programs, how to gather evidence before an impending trial, offers some strategies for a successful defense, takes us into the anatomy of a trial, and offers some suggestions for coping with the experience.

A challenge is offered to the reader; read the paper and come away without feeling disturbed and without having anxiety heightened. For those who have experienced what Dr. Fisher describes, I would predict a reawakening of memories best forgotten. For those who have not had the opportunity of a law suit directed against them, some interesting emotions will be experienced.

While this paper is written in the context of minimal competency testing, many of the key ideas may be applied not only to challenges to minimal competency testing but also to programs designed for other purposes.

Dr. Thomas H. Fisher is Administrator, Student Assessment Section, Department of Education, Tallahassee, Florida.

HCR

During the last few years, minimum competency testing programs have been initiated in many educational systems across the United States. Their initiation has resulted in court suits wherever a student has been threatened with loss of grade promotion or high school graduation. Florida, for example, has faced five legal challenges since 1977. The possibility of litigation against other minimum competency testing programs that determine decisions about individuals in schools is very real.

Articles on minimum competency testing programs have appeared in many journals and magazines including the *Phi Delta Kappan* (1978), *Today's Education* (1977), *Educational Leadership* (1979), and even *Better Homes and Gardens* (1980). One such article was written by McClung (1978) who, at the time, was affiliated with the Center for Law and Education in Cambridge, Massachusetts. (The Center has been active on behalf of minority students in two suits against competency testing in Florida

and one in North Carolina.) Through reading his article one can get an inkling about how competency programs can be challenged in court.

Unfortunately, none of the articles are written from the defendant's point of view. None describe the legal proceedings for the educator who has to face such challenges. None offer recommendations on avoiding traumatic experiences in court or how to defend a minimum competency testing program. The purpose of this article is to fill this void. The article will describe briefly the thrust of the challenges to the Florida competency program, will describe some of the legal events associated with a trial, and will suggest some strategies for surviving the experience. No attempt will be made to describe the Florida defense to the allegations made in the various cases because one of the cases is under appeal.

Before proceeding, it should be noted that the best defense for any minimum competency testing program is to have a well designed program in the first place. But, in today's litigious society even a good program is no guarantee that suits will not be filed. Thus, this article may be useful for many testing program directors and educators.

Avenues for Attack — What to Expect

The most-often referenced article on legal suits against minimum competency testing programs may be McClung's (1978) article "Are Competency Testing Programs Fair? Legal?" Yet, a review of the article reveals that McClung focuses on only a few avenues of attack: phase-in periods, the match between a test and instruction, and racial discrimination. While these are important, a more complete inventory of possible attacks might be the table of contents of any book on tests and measurement. No topic in measurement is free from being the focal point of a legal challenge. Test reliability can be challenged and, at the other extreme, so can the color of the ink used on the test.

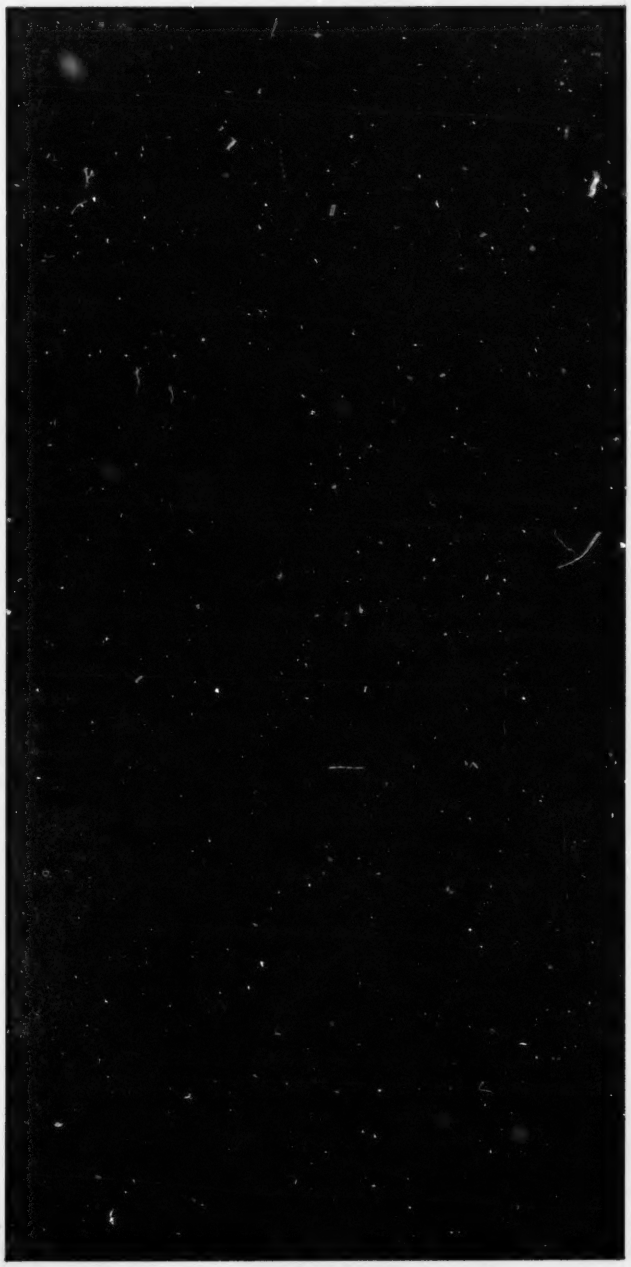
In addition, there are non-psychometric issues which can be avenues for attack. The favorites seem to be the basic legal authority for decisions made in conjunction with the tests and segregation of the schools.

Because both approaches may be important in legal challenges of a testing program, both will be discussed.

Psychometric Issues

1. *Test Security.* The issue of test security is one of the first issues which may be raised in any minimum competency testing program. This issue will generally surface as soon as the education agency responsible for the test begins item development or tries to find a test to purchase. Part of this interest can be traced to today's movement toward "truth in testing" and to natural curiosity about the content of the test. In Florida, as an example, the news media was a strong supporter of the minimum competency testing movement, and there was considerable interest in the test before it was given to students. In fact, one paper wanted to publish the test in their Sunday edition before it was ever administered to students. But, generally, the news media representatives were satisfied with an opportunity to see the test immediately after it was given to the students.

The Dade County, Florida branch of the National Association for the Advancement of Colored People was not satisfied with limited access to the test and sought an injunction to open the test development meetings to the public (*Burke v. Turlington*). An argument was made that the Department of Education was violating the Florida "sunshine law" by having closed test development meetings to which only selected people were invited. The



1. The reader is cautioned that this brief article cannot explain all dimensions of the legal attacks to be described.

theory was that every citizen should have the right to see the contents of the test before it was administered. The injunction sought was denied and the case was later dropped.

The issue of public access to the test was also raised in Virginia but with different results. The news media brought suit against the Department of Education to force the release of the test (Bracey, 1980). The Department lost the case, but the newspaper agreed to withhold publication of the test until the second administration. In the meantime, the legislature revised the Freedom of Information Act, protecting all tests except the state competency test. The competency test is now required to be released within six months of its administration.

2. *APA Standards.* The American Psychological Association published the revised *Standards for Educational and Psychological Tests* (1974) as a guide for the development and use of various tests. It contains a cautionary notice in the introduction telling the reader that the document "... is not written as law" (p. 8). However, it was used in the *Debra P. v. Turlington* case as a set of standards against which to compare the test.

Plaintiff's witnesses in the *Debra P.* case proceeded through the book giving their opinions as to whether or not the Department of Education had met the standards provided therein. This tactic can be used to establish a broad-based attack on any testing program. Agencies sponsoring such tests must be ready to present a reasonable defense for each issue or to stress the idea that the *Standards* are not necessarily attainable at all.

3. *Reliability.* Test reliability is a basic concept in tests and measurement, and challenges to a test's reliability should be expected in any court battle. There are two basic thrusts in this type of attack — question the size of the reliability coefficient and question the type of reliability coefficient. Some might conceivably question a coefficient they deem minimal. While arbitrary the attack is a simple one. The second gets a bit more complicated, especially with criterion-referenced tests which have several different approaches to reliability. In general, one should expect plaintiff's witnesses to condemn any test which does not have a reported test-retest reliability coefficient. Testing programs lacking this evidence will have to defend other coefficients as providing the necessary information on test reliability. One can expect KR-20 coefficients for criterion-referenced tests to be seriously questioned by challengers.

4. *Validity.* Along with test reliability, test validity is a certain avenue of attack. Attacks can be made on any of the claims of validity, no matter which validity is being described, due to the subjective dimensions of the concept of validity. In the *Debra P.* case, the Department placed emphasis on content validity while the plaintiffs placed great emphasis on construct validity. For witnesses and attorneys on both sides, it was necessary to reduce these complex psychometric concepts to terms which a non-measurement specialist could understand.

An additional validity argument which almost certainly will be raised is instructional validity (McClung, 1978). The argument is very easy to present by simply questioning whether or not content on the test is now being taught and has been taught to all students required to take the tests. The plaintiffs will want to know whether the education agency has specific proof that every student in every classroom is receiving the instruction on the skills being tested.

5. *Test Development Procedures.* For states or local education agencies which purchase an established commercial test, test development procedures can be a small problem or they can be a large problem. It obviously depends upon the quality built into the test by the authors and publishers. One should not make the assumption that a test can withstand a legal onslaught just because it was published. To be prudent, one must be assured that adequate test development procedures were used.

If the test is locally produced, it may have certain advantages such as greater likelihood of agreement about its content. This does not assure agreement over the test development procedures as both the item development and field-test procedures can be attacked. One must expect witnesses to question the test specifications, the quality of the item writers, the match between items and the objectives, the readability level, the distractors, the correct answer, the instructions, and, in short, anything which is considered in writing an item. One can expect witnesses to criticize the quality of individual test items and imply that the whole test is as inferior as the criticized items.

One also must expect testimony that the test is biased against some group; culture, region, or sex. This is a favorite avenue of attack, but a difficult one to prove. The beginning point in such debates is often that lower scores by minorities are evidence of bias. The defendant will have to demonstrate that the test development procedures included specific steps to control for and detect any bias.

Field-test procedures used in developing the new competency tests also may be challenged. The adequacy and design of the sample, the adequacy of the test questions, or the motivation of the students may be questioned. Plaintiff's attorneys also may attack the implementation of the test if the field-test showed high failure rates for minorities. They may question why officials went ahead with the project when they were aware of the potential impact of the test.

6. *Passing Scores.* Minimum competency testing programs depend upon pass-fail decisions for their impact. The establishment of passing scores is essential to these decisions, and, as such, becomes a target for legal challenges. The ordinary approach seems to be to assert that the passing scores have been determined arbitrarily. This may not be an effective approach since the literature suggests that such passing scores are always arbitrary in the sense that someone or a group of people had to make the decision, and the decision was subjective in the end (Glass, 1978; Hambleton, 1978). It is possible that this type of challenge will not be effective if it can be demonstrated that the passing scores were approved by an informed person or body which had the legal authority to do so.

A related point which may appear in any discussion about passing scores is the number of students who are "misclassified" — that is, the number of false negatives and false positives. Discussions along this line tend to become rather scholarly, but plaintiffs can be expected to try to personalize the issue in terms of the "devastating impact" of such passing scores on the individual students who are misclassified as false negatives.

7. *Mechanical Issues.* The last category of psychometric issues has been called mechanical as an attempt to capture all issues related to the test materials and procedures. This is a catch-all category, and it can be used to make negative comments about many features of a testing program. Criticism can easily be directed against the test artwork,

the instructions to students, and even the color of the ink used in the test. About the only way to defend against such criticism is to get expert witnesses to attest to the high quality of the materials and then let the court form its own opinion.

Non-Psychometric Issues

1. *Legal Authority.* A common attack against a testing program is a simple assertion that the program is proceeding without proper legal authority. Plaintiffs can assert that decisions have been made by people or legal bodies without the proper authority to make those decisions. This tactic is expedient because it narrows the attack, and it can be mounted without numerous witnesses to build the case. It almost entirely can be built around a restatement of events which transpired and legal arguments about what the law does or does not provide.

In Florida, this approach was used in the second and third legal actions — *Florida State Board of Education v. Brady* (1979) and *Brady v. Turlington* (1979). Both of these cases were legal challenges brought under Chapter 120 of the Administrative Procedures Act (Florida Statutes, 1979) which specifies the manner in which administrative rules must be enacted.

In the first of these two cases, the issues centered around whether or not the Commissioner of Education had the legal authority to set the passing scores for the State Student Assessment Test, Part II (the "functional literacy" test). In the second case, plaintiffs attempted to challenge the passing criterion itself, but the case was largely restricted by the hearing officer to whether or not the procedures followed by the state officials had been proper. The Department of Education eventually won the first case on appeal and won the second case at the administrative hearing level, later supported on appeal by plaintiffs.

To summarize, educators who are seeking to implement competency testing programs must expect to be challenged on their legal authority and the manner in which they have proceeded. The best defense may very well be to maintain close contact with one's attorney throughout the implementation of the program to determine if there are any legal pitfalls.

2. *Segregation in the Schools.* Testing programs often result in lower scores for minority students. Such scores open the door for accusations that the tests are biased. It also invites the assertion that the low scores are caused by segregation in the schools. Such accusations are particularly a problem in the southern states, but it also can be a challenge to schools anywhere which are not racially balanced. The theory of the challenge stems directly from *Brown v. Board of Education* which held that segregated schools inherently provide unequal educational opportunities. The twenty-fifth anniversary of *Brown* occurred during the *Debra P.* case, and the plaintiff's attorneys did not ignore the opportunity to draw parallels between the two cases.

The *Debra P.* case, challenging the functional literacy test, and the newer *Love v. Turlington* case, challenging the basic skills requirements, both relied heavily on segregation issues. In both cases, it was asserted that the last vestiges of segregation have not been removed from the schools and that the secondary effects of prior segregation are very difficult to remove. The testimony of expert psychologists, sociologists, and educators was used in *Debra P.* to demonstrate the lasting ill effects of segregated schools.

3. *Property Interests in a Diploma.* One of the more purely legal arguments which can be brought is one which involves whether or not a student has a property interest in a high school diploma. The legalities are not easily understood by a lay person since so much depends upon case law. Basically, the theory is that a student has a right to a diploma by virtue of his or her attendance at school. The student has the right to expect that a diploma will be forthcoming assuming that all courses were passed, and any substantive change in the graduation requirements cannot take place without due notice to the student. In the *Debra P.* case, it was argued that four to six years' lead time is necessary for any change in the educational program which would bring about a new graduation requirement. Such notice is tantamount to informing sixth-graders of their graduation requirements and then not changing them from that point forward. The question of sufficient lead time is one dimension of the *Debra P.* decision which is being appealed by the State defendants.

4. *Stigmatization Through Failure.* It likely will be asserted that students who fail will be stigmatized by the knowledge of that failure and by the recording of that failure on school records. In Florida, students' permanent records are supposed to show that a student has passed the minimum requirements, not that the requirements were not met. Nevertheless, the specter of stigmatization was raised in both the *Debra P.* and *Love* cases.

As with the previous issue of a student's property right to a diploma, the issue of stigmatization revolves around legal principles and interpretations of case law. The concept is that the student is severely affected by not receiving a diploma, by knowledge of his/her failure on the competency test, or by knowledge of such failure by a third party. Lack of a diploma is seen as being detrimental to the student's chances of obtaining a good job or furthering his or her education. Multiple opportunities to take the test does not seem to lessen the arguments in court that stigmatization has taken place by one's failure on the test.

Gathering the Evidence — Events Before the Trial

While a trial is important and attracts much public attention, important events also take place before the trial. These events shape the outcomes of the case through definition of the evidence which will be introduced. The time before the trial will be filled with discussions about access to public data, answering interrogatories, giving depositions, and stipulating to facts. Each of these topics is worthy of further discussion.

Access to Public Data

Today, it is a fairly well established principle that citizens have access to all public records produced by or retained by a governmental agency. There are exceptions, of course, for sensitive material, classified documents, and

related items. There also are differences in the spirit with which individual states and local school districts may cooperate in making information available. In Florida, with its strong "government in the sunshine" policies, extensive information including school district test data is readily available to the public and is routinely published in the newspapers.

Because public records, reports, and other documents can be accessed by any citizen at any time, information may be gathered by persons other than known members of the plaintiff's legal team. Defendants should be particularly alert to inquiries and requests for data which may be related to any pending legal actions. Requests for information should be processed, but, at the same time, attorneys for the defendants should be informed of the requests. It may be necessary to provide duplicate sets of the requested information for the defense team.

Discovery

One must distinguish between access to public records and the rights of opposing sides to information held by the other. The first is simply an expression of the rights of citizens whereas the other is a specific right of both parties to litigation. This right to information is known as "discovery."

Generally, the idea behind discovery procedures is the promotion of justice through full access to each side's evidence. Thus, witnesses are revealed, documents can be inspected, opinions can be sought, etc. The most important discovery procedures are (1) requests to produce, (2) interrogatories, and (3) depositions.

1. *Requests to Produce.* Legal procedures allow for the discovery of specific items through requests to produce. Typically, the attorneys will request certain reports, documents, computer analyses, or other items thought to be related to the litigation. The request will specify a date by which time the materials must be produced; e.g., the first request submitted by plaintiff's attorneys in the *Love* case demanded a copy of each of the basic skills tests administered to eleventh grade students in Florida by the Statewide Assessment Program. Copies of the tests were provided by the defendants.

2. *Interrogatories.* Interrogatories are sets of questions for which answers are demanded. Either side of a court case may demand such questions as a means of getting information thought to be necessary. These questions can be powerful and legitimate tools or can be misused. The distinction is not always clear.

Questions on interrogatories must be carefully phrased to elicit the information which is desired. The respondent has the responsibility of providing exactly the information which has been requested. If the question is phrased incorrectly or if it explores some dimension other than that which is really needed, the effort is wasted.

Examples of interrogatories posed to the author in the course of the *Brady v. Turlington* case are:

1. Identify and describe in detail all statistical procedures and studies undertaken to detect cultural, ethnic, racial and other biases in each of the functional literacy and the basic skills tests for the eleventh grade; these should include but not be limited to the results of any such procedures and/or studies. Identify the scholarly publications indicating that the procedures used were or were not professionally accepted, and whether the procedures used comported with the standards recommended by the American Psychological Association.
2. Describe the amount of time spent by the Department of Education in the development of each of the basic skills and functional literacy tests; include, specifically, the date at which work was initiated on promulgation of specific test questions and the date of completion of such questions.

These were but two of the sixty-four questions submitted in this interrogatory.

Sometimes, interrogatories can seem unreasonable. They may be too long, not relevant to the case, or unduly burdensome to answer. If so, the only recourse is to ask the court to strike the offending question or questions.

3. *Depositions.* A deposition is a very important tool of attorneys. Both sides may take depositions from the witnesses or persons who have some knowledge about the case. These depositions are normally taken before the case comes to trial.

A deposition is given by a person in the presence of a court reporter and attorneys for both sides. The statements made in the deposition are made under oath, transcribed, and used in the trial as may be necessary. Statements made in the deposition may be compared to statements made at the trial to see if the witness is being consistent or is able to be impeached.

Depositions proceed without a trial judge present to settle arguments about whether or not a particular question is relevant. The attorney for the adverse party may enter an objection for the record but, generally, the witness must answer all questions.

Since one purpose of the depositions is to understand what events actually happened and what documents are available to substantiate the events, the proceedings can be quite lengthy. One deposition taken from the author in conjunction with the *Debra P.* case lasted for almost three days. During that time, the author was responsible for identifying every publication, report, letter, telephone log sheet, memorandum, printout, speech, calendar notation, or record of conversation which in any way impacted the design of the testing program. The location of these documents and their identification took an enormous amount of time. Once located, the attorneys inspected each document and requested a copy of those which looked useful. Since attorneys for both sides wanted the document and because of its possible introduction into evidence in court, three copies of each document were made. Documents stapled together were disassembled, copied, and reassembled. It is estimated that approximately one hundred thousand impressions were made for the *Debra P.* trial alone. It took a full year to reassemble the documents into their original condition and refile them. The implications for one's work load during a trial are obvious.

Subpoenas

A subpoena is a means of assuring that a witness will appear in court or appear for a deposition. If he or she does not appear, a penalty can be assessed by the court such as holding the individual in contempt of court.

Typically, a subpoena is served by a sheriff's deputy or someone else authorized to serve the papers. Having a subpoena served is an experience everyone should

"enjoy" at least once in a lifetime. If nothing else, it gives one an immediate impression of the power of the law.

A subpoena *duces tecum* is distinguished from a subpoena in that it demands a person to appear bringing certain information with him. The material requested can be in the form of data tapes, publications, records, etc. Sometimes, it can be difficult to comply with a subpoena *duces tecum* and, if there is sufficient cause, the subpoena may be quashed by the court.

Findings of Fact

One method of shortening a trial is to agree on certain facts without hearing evidence in court. This process is accomplished through a pretrial stipulation. Briefly, the two sides assemble prior to the trial after witnesses have been interviewed and evidence reviewed. Each side proposes facts with which the other either can agree or disagree. If both sides agree, the court will recognize the statements as facts for the case, and no further evidence on those issues will have to be taken.

In most cases, the facts which can be agreed upon are only the innocuous ones such as when an event occurred. The tough issues in a case are rarely settled through this process because they constitute the real reason why there was a court challenge in the first place.

The process is reminiscent of a collective bargaining negotiation in which both sides devote hours trying to reach agreement over the wording of a contract. The language used is important — the omission of a key word can make a difference. While the complexities appear, at times, cumbersome the law is precise and interpretation of the law requires a careful choice of vocabulary and syntax.

In summary, nothing is unattainable by either side if one requests the right thing. For the testing director, this means that the plaintiff's attorneys have access to all office files, correspondence, publications, data tapes, telephone records, and so forth. This raises several questions for officials defending a case.

First, officials will undoubtedly want to cooperate with the court in producing necessary information, but some mechanism must be established for determining if there is any justifiable fee for copying materials such as computer tapes or written documents. If there are fees, some means must be provided for the equitable assessment and collection of those fees.

Second, the education agency must decide which records are sensitive and must be protected by court order. In *Debra P.*, the court protected the tests, the item files, and the school records of the plaintiffs.

Third, the agency must decide if it will acquiesce to plaintiff's requests for information or whether there are grounds upon which to challenge each request. If so, the court can be requested to decide whether or not the information should be produced.

Fourth, while the plaintiffs have the right to request existing information, they usually do not have the right to demand information to be produced which otherwise is nonexistent. This is a delicate point as it may be in the best interests of the defendants to cooperate, collect the information, and make it available to the other side.

Last, because any or all of one's correspondence and records may be used as evidence in a trial, proper care should be exercised at all times. The "office comedian" should not be permitted to hone his or her skills on materials circulated for the information of staff members or on draft materials slated for later publication. One should assume that speeches, articles, and presentations may become evidence. It would be prudent not to say anything which cannot be honestly defended in court. One needs to be sensitive that the written court record cannot show facial expressions which normally alert a person to an exaggeration, understatement, or humorous interpretation of events.

Strategies for Winning

The American legal system attempts to be impartial, fair, and seek justice. But the name of the game is to win. Both sides of any trial are interested in winning. Therefore, attorneys will do their best to ferret out the facts, to present the facts in a coherent manner, and to impress the courts with the logic of the case. Beyond that, attorneys also will use other strategies to win. While there are many such strategies, only a few will be discussed here.

Selection of a Judge

One fact with which attorneys must contend is that judges differ. They have different expectations and degrees of tolerance for courtroom behavior, for example. They also differ in their philosophy and approaches to interpreting the law. Some are basically liberal and others take a more conservative position. Even the United States Supreme Court changes direction as its membership changes. This characteristic can be used to one's favor in legal challenges to testing programs.

At the minimum, one should expect the plaintiffs to attempt to select a court and judge favorable to the plaintiffs' case. The most obvious way to do this is to bring the suit in a court which has already heard cases which have a bearing on the testing case. One approach might be to bring the suit in a court which has previously dealt with segregation issues or some other issue related to the public schools. The plaintiffs' attorneys used this approach in the so-far unsuccessful *Iwanda v. Berry* (1980) case in Charlotte, North Carolina, a challenge to the North Carolina competency testing program. Here, the court had already heard a case related to cross-town busing to achieve school integration.

Timing of the Case

Court cases are carefully arranged with every move purposeful and related to what the plaintiffs or the defense wish to accomplish. These arrangements can affect the trial dates, the witness list, and even the length of testimony.

Trial dates are affected by the calendar of the court itself. Trials can be delayed because of other legal affairs of the court or even if the judge or staff go on vacation. Dates can be affected by how much time it takes to accumulate

the evidence and to synthesize it. The date on which one files a court suit can even be a strategy in itself. For example, if a group of students are scheduled for graduation under the competency program, two contrasting strategies might be used. One could sue early in order to have plenty of time to present evidence and argue points of law. Conversely, one could sue only a few weeks before graduation in order to create a sense of urgency. This is particularly useful if a preliminary injunction is being sought.

During the trial, scheduling of witnesses, including the length of their testimony, can be used to affect the trial schedule. If one can condense or lengthen certain testimony, it may be possible to affect the amount of the evidence on some point.

The Theory of the Trial

Given an understanding of the evidence, the facts, the personalities, and the schedule, the attorneys can build a theory of how the trial will proceed. The theory will be an overall strategy for winning.

Plaintiff's attorneys may seek to stress deficiencies in the tests themselves. In that case, one can expect much testimony around psychometric issues previously mentioned. On the other hand, the attorneys may seek to dwell on segregation of the schools and the basic "unfairness" of the competency testing program. They could argue the case based upon legal issues of case law and interpretations of state statutes. It is possible to combine all three approaches, but one might run the risk of diluting the effectiveness of any single argument.

It is possible for the two sides to have opposing theories of the trial and how to proceed. One side might be very detailed in presenting evidence while the other side strains to keep arguments simple and brief. In either case, the theory of how to proceed is built early in the game, and it is difficult to change directions in mid-trial.

Class Certification

Attorneys bringing suit against a testing program may attempt to make it a class action case. Briefly, this means that the plaintiffs are representatives of a class of citizens and the program being challenged has an impact on all members of the class. Class certification is largely a legal maneuver which has rather specific guidelines which must be followed.

Class certification is important because it makes the difference between having to hold one trial covering all members of the affected class or classes and having one trial for each person who might be an aggrieved party. In *Debra P.*, the court certified the following classes:

> Class A are all present and future twelfth grade public school students in the State of Florida who have failed or who hereafter fail the SSAT-II [*i.e.*, the State Student Assessment Test, Part II].
>
> Class B are all present and future twelfth grade black public school students in the State of Florida who have failed or who hereafter fail the SSAT-II.
>
> Class C are all present and future twelfth grade black public school students in Hillsborough County, Florida who have failed or who hereafter fail the SSAT-II.

The court ruling in 1979 thus affected the entire state as opposed to a single school district.

Injunctive Relief

Most laymen have heard of court injunctions and know that it can have immediate effects on a situation. One might ask the court for an injunction to delay an execution, integrate a school, or register voters. In the same way, plaintiffs may ask for injunctive relief to delay the effect of a graduation requirement tied to test scores.

Generally, in seeking a preliminary injunction, the plaintiffs must (1) present evidence in a court hearing at which the defense has the opportunity to present opposing evidence and (2) be determined by the court to have every likelihood of prevailing ultimately in the final decision. This means that part of the arguments for both sides must be revealed in advance of the trial, to be followed later by the full trial on all points.

In *Debra P.*, a preliminary injunction hearing was avoided during the trial. The Commissioner of Education instructed the local school districts not to issue any certificates of completion to high school students on the basis of failure of the state competency test. The trial then proceeded to its conclusion at which time an injunction was ordered against using the program as a graduation requirement although the tests could (and do) continue for remedial purposes.

By contrast, in the *Iwanda H.* case, the plaintiffs decided not to request an injunction, and the North Carolina competency program is continuing unabated (Brown, 1980).

Public Relations

In the normal course of events, good public relations is essential to education officials and to anyone else constantly in the public eyes. Public relations can be used to build public opinion for or against a particular educational program. It also can be used to build public opinion before or during a trial, although this generally is discouraged.

During a trial on minimum competency testing programs, there will be great temptation to present evidence and testimony via the news media covering the trial. It can be done by giving reporters favorable to one's position tips about witnesses or key evidence. Or, it can be done by giving interviews, particularly after a witness has completed his or her testimony.

In the *Debra P.* trial, one of the plaintiffs was scheduled to take the stand to testify and was to do so anonymously at the request of his attorneys (*St. Petersburg Independent*, 1979). However, a reporter in the audience objected and brought the newspaper's attorney to pursue the point. It seemed that the plaintiff was well-known to newspaper and television audiences since he had granted interviews before the scheduled testimony. The court permitted the witness to testify but not anonymously.

Endurance

Unfortunately, trials tend to be lengthy affairs. They can

even be won on the basis of wearing down the opposition and the court. The legal maneuvers, gathering the evidence, participating in the trial, waiting on the results, participating in the appeals, and running the office while all this is happening can be quite an endurance contest.

Surprisingly, trials tend to be events requiring physical strength, too. One does not tend to think of that dimension, but it is not unusual to come to trial with three brief cases and assorted boxes of materials. The boxes of evidence can be quite numerous and the documents themselves can easily run into the thousands. The courtroom in the *Debra P.* case held perhaps twenty-five boxes of exhibits for each side which had to be carried from the main offices before and after the trial. Staff assistants were needed to locate exhibits and to carry documents to and from hotel rooms and offices. Beyond the physical labor itself, one has to expect the mental activities to begin at breakfast and extend to midnight or beyond. Trials are exhausting affairs, and one must be in condition to endure.

The Trial

Most citizens never have the opportunity to be involved in a trial, and certainly most educators do not get sued because of their job responsibilities. However, it is almost a certainty that directors of competency testing programs will be involved in litigation challenging the tests. Therefore, it will be useful to know what to expect in the way of courtroom demeanor, providing technical assistance to the attorneys, giving testimony, contending with expert witnesses, and considering the evidence to be used.

Courtroom Demeanor

Trials are a formal affair with great respect shown for the court. The attorneys and the witnesses address the judge as "your honor" and speak of the judge as "the court." Opposing sides will usually be very respectful of each other and will not interrupt unless the proceedings get vigorous and hostile. Spectators in the courtroom rise when the judge enters and leaves the room.

The general rule to be followed is to not show emotion or any reaction no matter what happens. Opposing testimony may be designed to shred everything one has accomplished or to question one's motives. Testimony may be presented which seems outrageous; attorneys may use arguments which seem strange or even boring. No matter what happens, a neutral reaction is best.

Technical Assistance to Attorneys

Each side in a courtroom battle is entitled to be served by technical assistants throughout the trial. The assistants provide advice on technical or legal matters to the attorneys. The technical assistant would not normally also be a witness in the trial although there are exceptions. In the *Debra P.* trial, this writer served as a representative of the State Department of Education in addition to being a witness. By contrast, during the *Brady v. Turlington* proceedings, this writer was excluded as a technical assistant.

Usually, attorneys are not skilled in issues surrounding testing programs. Statistics and psychometrics mean little to an attorney without special training. The testing director will have to provide the training and also will help give direction at the trial. Since few know the program as well as the testing director, the attorneys depend upon him or her for help in organizing the testimony, locating witnesses, anticipating the testimony of opposing witnesses, and locating and interpreting documents.

Giving Testimony

The testimony of witnesses forms the core of the trial, and the credibility of the witnesses is important to the outcome of the trial. To the novice, giving testimony can be a terrifying experience, or it can be no more difficult than giving a speech. It depends upon how relaxed the witness is and how experienced one is in facing hostile audiences.

Determination of which direction an opposing attorney's questions will lead usually is not possible. Sometimes, the questions appear to go nowhere as if the attorney is exploring an avenue or trying to establish a point for the record. Other times, the questions will appear to stress something which does not seem that important.

An effective way to answer the questions is to firmly answer "Yes" or "No" and then proceed to explain anything additional which is necessary. This may well be unfamiliar for one who is used to debates and speeches which allow great latitude for equivocating one's answer. Such behavior does not work well in court.

When testifying, the witness may have access to documents, visuals, and even the blackboard. Technical approaches to testing issues are not likely to be well received. The judge is not a testing expert and the attorneys are probably not either. Discussions about test reliability are not going to revolve around the derivations of formulas as much as whether or not opposing witnesses say that the procedures were correct or not.

Under normal circumstances, witnesses will be excluded from the courtroom prior to giving their testimony. The idea behind this sequestering of the witnesses is to prevent their testimony from being influenced by each other's testimony. The attorneys refer to this tactic as "invoking the rule." The reference is to Rule #615 of the Federal Civil Procedures (*Federal Rules of Evidence*, 1979).

Expert Witnesses

An expert witness is someone who has exemplary training and has great experience is some field relevant to the trial. It is someone who has prestige and is considered an authority. Of course, this is somewhat subjective and the opposing attorneys may object to one's qualifications as an expert. Once qualified, an expert can testify about things which he or she knows and about those things about which an opinion may be held. Ordinary witnesses usually are not permitted to include opinions in their testimony.

Several educational and testing experts were used in the *Debra P.* trial; Peter Airasian, George Madaus, James Popham, William Mehrens, and Ralph Tyler. Their testimony consumed many days of the trial and many pages of evidence. The net effect was to produce much evidence on both sides of most major issues.

Surviving the Experience

Our society is increasingly litigious, and court challenges to testing programs are going to occur with increasing frequency. In some ways, such challenges are unfortunate because the legal arena is not a particularly efficient way to handle controversies and differences of opinion about policy. On the other hand, the educational world is complex, and individual rights are important. Therefore, it is incumbent upon testing directors to learn to cope with legal challenges. Some suggestions on surviving the experience are important to consider.

Teamwork

Previously, the provision of technical assistance to the attorneys was discussed. This is one important dimension of a teamwork approach to a court case. It is important because the testing director is not likely to know anything about the law, and the attorneys are not likely to be familiar with psychometric concepts.

Beyond technical assistance, the concept of teamwork has other important dimensions. For one thing, it is quite helpful to have the testing director act as an interface to other staff of the education agency. The legal challenge may very well go beyond testing issues into educational finances, compensatory education, school facilities, curriculum, and the like. If it does go into these areas, witnesses must be located, evidence sifted, and exhibits prepared. The testing director can help locate people to complete these activities.

Further, because litigation is so complex, preparation for a trial is lengthy. Good teamwork will foster a mutual support system to combat the pressure of the litigation, provide for a division of labor to accomplish necessary tasks, and provide and wider basis for strategic planning. Clearly, if a good team spirit is present, the chances of winning are enhanced.

Once the specter of litigation has been raised, it will be natural for the attorneys to become closely involved in many dimensions of a testing program's daily operations. Rules, policies, and practices will be subject to the attorney's inspection. Such inspection may become irritating at times because it delays daily work tasks. It will be frustrating to have attorneys describe what will not work, yet not be able to describe what will work. But, attorneys can help testing programs stay out of trouble.

Expecting the Unexpected

Competency testing is a highly political affair because many of the programs are born in state legislatures or local school boards, and not in the minds of educators. The political world, in large part, is comprised of votes and influence. Compromises are the name of the game, so one should not be surprised when it becomes necessary to settle educational or psychometric issues on that basis. Reversals of policy and changes of direction are to be expected.

In the same way, legal challenges can be filled with surprises. The legal papers will indicate specific accusations, but there are often hidden agendas. Attorneys may raise issues during a trial to build a basis for further appeal. Questions directed to a witness on the stand may seem surprising and pointless, only to reappear in the closing summary arguments. Documents and records may be interpreted in every conceivable way except the way they were originally intended. Copies of professional papers and speech notes from meetings months and years in the past will find their way into the hands of the plaintiff's attorneys to be read to a witness on the stand.

Coping with Stress

Being a testing program administrator under court attack is stressful. One has to be able to cope with it.

Everyone has ways of coping with stress, and there are books written on the topic which are readily available. The typical ways to cope are exercise, meditation, getting a little help from your friends, and, being prepared. All of these techniques are useful.

The sources of stress associated with litigation are not unusual. First, there is the threat posed by forces lining up against the program you helped build. This can take the form of public meetings packed with opponents as happened in the August 1978 meeting of the Florida State Board of Education. Or, it can come about by reading the sensational headlines of the news media during the plaintiff's presentation of evidence in a trial.[2]

Beyond this, other stress-producing factors are present. There is the implied threat of financial damages. The daily work load is doubled as preparation for a court defense consumes large amounts of time. There is the forced separation from family if the trial takes place somewhere other than in one's hometown. The uncertainty of the outcome of the trial and the long-term outlook for the testing program and for education, itself, can be unsettling. Under these conditions, the "fight or flight" syndrome cannot help but be present. Coping skills are essential.

Threats — Real or Imagined?

In August 1978, one of the plaintiff's attorneys — later to be involved in the *Debra P.* trial — testified in a State Board of Education meeting during which nine hours of testimony was heard about the testing program (State Board of Education, 1978). This attorney mentioned to the State Board members the possibility that each of them

2. Of course there also is a lighter side to the news stories as in the lead sentence to a Tampa Tribune story by Howard (1979) about this writer's testimony, "Tom Fisher, a timid, gentle looking man whose voice comes off almost as a mumble, took on the tough job as head of Florida's student assessment program in early 1976." Friends indicate this personal description is not totally accurate.

could be individually sued in conjunction with the testing program.

Although the probability of being sued for damages is unknown, the threat, legally, is real. Testing directors everywhere need to consider this issue and determine whether or not they have any protection. Perhaps the state or local school district has a liability policy which offers protection, or there may be a blanket protection to cover all employees for acts committed in conjunction with performance of their duties. Private liability insurance is not a very good possibility. This writer conducted a search for such insurance and was told that only Lloyd's of London would provide any. One agent merely laughed and said that his company would not insure anyone who already had 5,000 people lined up to sue. It would be wise to explore the liability protection available. It will not do any good to find insurance after work has begun on the program.

Who's Minding the Store?

Without question, litigation demands one's attention and time, and so does the routine work in the office. The administrator's choices in the matter are limited to: (1) attend to the litigation and let the office work go, (2) attend to the office and let the litigation go, (3) hire extra help to work on either the litigation or the office tasks, or (4) give extra duties to the other staff members during the duration. Each person has to consider these options or combinations of options and decide what to do. It does no good to provide good support for the trial only to discover that the testing program has disintegrated so badly that it cannot be continued, and vice versa.

As mentioned previously, trials can be endurance contests as well as attempts to find justice. One has to be prepared for a long period away from the office. For example, the *Debra P.* trial lasted four weeks and the preliminaries consumed many months before the trial. After the trial, the task of replacing the office files required almost a year. So, anticipate the worst and determine how office affairs will be handled during the litigation.

Dealing with the Vocabulary

At times it seems as if attorneys seem to depend upon foreign phrases and archaic English to communicate with each other. To the lay person, this can be very confusing. It is frustrating to sit in the courtroom listening to attorneys arguing about some point which cannot be understood without knowledge of Latin. It also can be amusing as in the phrase appearing at the end of an affidavit, "Further affiant saith not."

While this paper cannot list all relevant legal phrases, a few can be illustrated. The following definitions are taken from *Black's Law Dictionary* (1968) and paraphrased into lay terms. These are terms which have been used in the Florida legal challenges.

1. *appellant* — The party who appeals one court's findings to a higher level court.
2. *arguendo* — An argument made for the sake of argument ("assuming in arguendo ..."). An observation made for illustrative purposes.
3. *declaratory judgment* — A statement by the court which clarifies or establishes the rights of the parties to a suit or offers the opinion of the court on some legal question. It is not necessary that an actual wrong have been committed for a declaratory judgment to be rendered.
4. *defendant* — The person who is being sued and must defend himself or herself.
5. *deposition* — The oral testimony of a person taken out of court and under oath. The responses to questions are recorded and authenticated and may be used in court under certain circumstances. The person offering the testimony is the deponent.
6. *expert witness* — A person who possesses knowledge not acquired by the average person. One whom the court recognizes as having special understanding of a topic brought by training or experience. An expert witness is permitted to state opinions inferred from the court evidence whereas ordinary witnesses usually do not state opinions in their testimony.
7. *impeaching a witness* — To question the accuracy of a witness' testimony. To demonstrate that a witness is not worth believing.
8. *injunction* — A writ issued by the court which orders a party to do something or prevents a party from doing something. A preliminary injunction may be rendered by the court prior to the full airing of the evidence. It may be given on behalf of the plaintiff if the court believes that the plaintiff will prevail in the case. The court cannot issue a preliminary injunction without giving the defendant a chance to defend himself.
9. *interrogatory* — A series of written questions to be answered in writing under oath.
10. *plaintiff* — The person who is bringing suit against another party.
11. *request for admissions* — An official petition for the voluntary acknowledgement of certain facts relevant to a suit.
12. *subpoena duces tecum* — A particular kind of writ which requires a person to appear in court with a document or other evidence requested by the person issuing the subpoena.
13. *summons* — A writ offered by the court directing the sheriff to notify a party that he or she has been sued and ordering him or her to appear in court to defend himself or herself.
14. *voir dire* — A court examination of the qualifications of an expert witness to determine whether or not he is really an "expert." Either side may challenge the other's experts through voir dire questions. The term is French and means "to speak the truth."

The reader is encouraged to refer to other reference books possibly available in local libraries. One such book is *Litigation and Trial Practice for the Legal Paraprofessional* (1976). This book can be of great assistance in learning the procedures and language of the courts. Such knowledge is helpful in reducing anxiety caused by one's unfamiliarity with court procedures.

In Summary

The purpose of this paper was to describe the events surrounding legal challenges to minimum competency testing programs and to suggest ways of coping with the experiences. The discussion primarily was based on the five legal challenges to the Florida program although reference was made to suits in other states for contrast.

Legal challenges to minimum competency testing programs are likely to occur regardless of whether or not the program is state or local in origin. Whenever a student is faced with a threat to promotion or graduation, the probability of having the testing program contested is very real.

Litigation is costly in terms of financial resources, time, and labor. Defendants will find themselves facing lengthy depositions, searches for documents, delays, and weeks in court. Maintaining the testing program while defending oneself in court will be a struggle.

Testing directors who get involved in litigation should work closely with their attorneys. Teamwork is needed to present a good defense. All areas of test development and implementation will be attacked in court. Concommitant issues will be chiefly in the area of constitutional rights and segregation of the schools. The best defense is to have a well designed program in the first place.

Although litigation is not an efficient way to settle policy disputes, the experience of having the testing program challenged in court is not improper. Minimum competency testing programs are causing a dramatic change in today's schools. It is only proper that educators know for certain that children's rights are not being violated.

References

Standards for Educational and Psychological Tests. (Washington, D.C.: American Psychological Association, 1974.)

Black, Henry Campbell. *Black's Law Dictionary* (4th ed.). (St. Paul, Minnesota: West Publishing Co., 1968.)

Blanchard, Roderick D. *Litigation and Trial Practice for the Legal Paraprofessional.* (St. Paul, Minnesota: West Publishing Co., 1976.)

Bracey, Gerald. Virginia Department of Education. Personal communication, July 14, 1980.

Brady v. Turlington, 372 So.2d 1164 (Fla. 1st DCA 1979).

Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

Brown, William. North Carolina Department of Education. Personal communication. July 16, 1980.

REPORTS AVAILABLE

Back issues of *Measurement in Education* are available for $2.50 each per single issue, and for 75¢ each in quantities of 25 or more for a single issue.

Vol. 1, No. 1 *Helping Teachers Use Tests* by Robert L. Thorndike
No. 2 *Interpreting Achievement Profiles — Uses and Warnings* by Eric F. Gardner
No. 3 *Mastery Learning and Mastery Testing* by Samuel T. Mayo
No. 4 *On Reporting Test Results to Community Groups* by Alden W. Badal & Edwin P. Larsen
Vol. 2, No. 1 *National Assessment Says* by Frank B. Womer
No. 2 *The PLAN System for Individualizing Education* by John C. Flanagan
No. 3 *Measurement Aspects of Performance Contracting* by Richard E. Schutz
No. 4 *The History of Grading Practices* by Louise Witmer Cureton
Vol. 3, No. 1 *Using Your Achievement Test Score Reports* by Edwin Gary Joselyn & Jack C. Merwin
No. 2 *An Item Analysis Service for Teachers* by Willard G. Warrington
No. 3 *On the Reliability of Ratings of Essay Examinations* by William E. Coffman
No. 4 *Criterion-Referenced Testing in the Classroom* by Peter W. Airasian and George F. Madaus
Vol. 4, No. 1 *Goals and Objectives in Planning and Evaluation: A Second Generation* by Victor W. Doherty and Walter E. Hathaway
No. 2 *Career Maturity* by John O. Crites
No. 3 *Assessing Educational Achievement in the Affective Domain* by Ralph W. Tyler
No. 4 *The National Test-Equating Study in Reading (The Anchor Test Study)* by Richard M. Jaeger
Vol. 5, No. 1 *The Tangled Web* by Fred F. Harcleroad
No. 2 *A Moratorium? What Kind?* by William E. Coffman
No. 3 *Evaluators, Educators, and the Publics: A Detente?* by William A. Mehrens
No. 4 *Shall We Get Rid of Grades?* by Robert L. Ebel
Vol. 6, No. 1 *On Evaluating a Project: Some Practical Suggestions* by John W. Wick
No. 2 *Measuring Reading Achievement: A Case for Criterion — Referenced Testing and Accountability* by S. Jay Samuels and Glenace E. Edwall
No. 3 *Security in a Citywide Testing Program* by Anthony J. Polemeni
No. 4 *Dear Mama: Why don't they love me anymore?* by Thomas J. Fitzgibbon
Vol. 7, No. 1 *The Discrepancy Evaluation Model (Part I)* by Andres Steinmetz
No. 2 *The Discrepancy Evaluation Model (Part II)* by Andres Steinmetz
No. 3 *What Graduate and Professional School Students Think About Admission Tests* by Leonard L. Baird
No. 4 *The Paradox of Education Testing* by Robert L. Ebel
Vol. 8, No. 1 *FACE UP: A Framework for Assessing Career Educators Utilization Programs* by Bruce W. Tuckman
No. 2 *Grade Equivalent Scores* by Gary Echternacht and *If Not Grade Equivalent Scores — Then What?* by Jeanne M. Plas
No. 3 *Criticisms of Testing: How Mean is the Median?* by Henry S. Dyer
No. 4 *The Superintendent and Testing: Implications for the Curriculum* by Herbert C. Rudman
Vol. 9, No. 1 *A Consumer's Guide to Criterion — Referenced Test Item Statistics* by Ronald C. Berk
No. 2 *Perspective on Intelligence Testing,* by Roger T. Lennon
No. 3 *Bias,* by Eric F. Gardner
No. 4 *The Use of Tests in Admissions to Higher Education* by Mary Fruen
Vol. 10, No. 1 *Some Comments on Criterion-Referenced and Norm-Referenced Achievement Tests* by William A. Mehrens and Robert L. Ebel
No. 2 *Does the Rasch Model Really Work? A Discussion for Practitioners* by R. Robert Rentz and Charlotte C. Rentz
No. 3 *A Perspective On The Uses and Misuses of Standardized Achievement Tests* by Peter W. Airasian
No. 4 *The Practical Side of Criterion-Referenced Test Development* W. James Popham and Elaine Lindheim

Burke v. Turlington, (Fla. 2nd Cir. Ct. 1978) Case No. 78-223.
Debra P. v. Turlington, 747 F. Supp. 244 (DC M.D. Fla. Tampa Div. 1979).
Florida School Laws (1976 edition). Tallahassee, Florida: Florida Department of Education, 1976.
"Educator Calls State's Literacy Test 'Unconscionable.'" *Fort Myers News Press*, May 19, 1979.
"Educator Gives Failing Mark to State's Assessment Test." *Fort Myers News Press*, May 22, 1979.
"Embarrassed Student Tells Judge of Flunking Literacy Test." *St. Petersburg Independent*, May 4, 1979.
"Ex-Principal: Blacks are Penalized by Literacy Test." *Fort Lauderdale News*, May 3, 1979.
Florida State Board of Education v. Brady, 368 So. 2d 661 (Fla. 1st DCA 1979).
Florida Statutes. State of Florida, Tallahassee, 1979.
Glass, Gene V. Standards and Criteria. *Journal of Educational Measurement*, 1978, 15, 237-261.
Hambleton, Ronald K. On the Use of Cut-Scores with Criterion-Referenced Tests in Instructional Settings. *Journal of Educational Measurement*, 1978, 15, 277-290.
Howard, Sherry. "Founder Testifies in Favor of Literacy Test." *Tampa Tribune*, May 30, 1979.
Iwanda H. vs. Berry. United States District Court, Charlotte, North Carolina Division. Case #CC80-0156.
Kaercher, Dan. "A Report to Parents on Minimum Competency Tests." *Better Homes and Gardens*, May, 1980, 27-28; 32; 37.
Love vs. Turlington. United States District Court, Middle District of Florida, Tampa Division (Case number 80-550-CIV-TH).
McClung, Merle Steven. "Are Competency Testing Programs Fair? Legal?" *Phi Delta Kappan*, 1978, 59, 397-400.
Pipho, Chris (Ed.). The Minimum Competency Testing Movement. *Phi Delta Kappan*, 1978, 59, 585-656.
Richmond Newspaper Incorporated v. Campbell. State Circuit Court of the City of Richmond, Virginia, Division One. (no case number available)
Rules of Evidence for the United States Courts and Magistrates (2nd ed.). New York: Clark Boardman Company, Ltd., 1979.
State Board of Education. Minutes of the meeting of August 15, 1980. Tallahassee, Florida.
"State Literacy Test Likened to an Ineffective Driver's Exam." *St. Petersburg Times*, May 18, 1979.
Testing. *Today's Education*, March-April, 1977, pp. 35-55.
Wise, Arthur. Why Minimum Competency Testing Will Not Improve Education. *Educational Leadership*, 1979, 36, 546-549.

NCME NATIONAL COUNCIL ON MEASUREMENT IN EDUCATION

USPS 823120

1230 17th Street, N.W.
Washington, DC 20036

Second class postage paid
at Washington, D.C.
and
additional mailing points.

A series of special reports of the National Council on Measurement in Education